IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1232

Filed: 5 May 2015

North Carolina Industrial Commission, I.C. No. W12544

JEFFREY HUGGINS, Employee, Plaintiff,

v.

MARLATEX CORPORATION, Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Carrier, Defendants.

Appeal by plaintiff from opinion and award entered 17 June 2014 by the North Carolina Industrial Commission. Heard in the Court of Appeals 8 April 2015.

Jeffrey Huggins, plaintiff-appellant, pro se.

McAngus, Goudelock & Courie, P.L.L.C., by Cameron S. Wesley and David M. Galbavy, for defendants-appellees.

TYSON, Judge.

Jeffrey Huggins ("Plaintiff") appeals from Opinion and Award of the North Carolina Industrial Commission ("the Commission") holding the parties' Final Compromise Settlement Agreement was enforceable and ordering Plaintiff to execute the Medicare Set-Aside Post-Settlement Administration Agreement. We cannot decipher Plaintiff's arguments and dismiss Plaintiff's appeal.

I. Factual Background

Plaintiff was employed by Marlatex Corporation ("Defendant") on 16 March 2009. On this date, Plaintiff injured his back while attempting to catch a falling box. After a full evidentiary hearing, Defendant signed a Consent Agreement acknowledging Plaintiff had sustained a compensable injury under the Workers' Compensation Act.

On 17 August 2012, the parties entered into voluntary mediation and successfully negotiated a full and final settlement of Plaintiff's claim. Pursuant to the Mediated Settlement Agreement, Defendant and its carrier, New Hampshire Insurance Company (collectively, "Defendants") agreed to pay Plaintiff a total sum of $205,000.00 and to fund a Medicare Set-Aside in the amount of $568,750.00. The parties agreed the Medicare Set-Aside would be funded by an annuity and professionally administered through Careguard.

After executing the Mediated Settlement Agreement, Plaintiff, Defendants, Plaintiff's counsel, and Defendants' counsel signed a Final Compromise Settlement Agreement ("the FCSA"). The FCSA stated, in pertinent part, as follows:

> It is understood and agreed by Employee-Plaintiff that in making this Agreement, he was not influenced by any representations or statements regarding his condition, the nature of his injuries, or any other matters concerning his claim before the North Carolina Industrial Commission, made by any person, firm, corporation, physician, or surgeon acting for or on behalf of the Employer-Defendant or Carrier-Defendant . . . . Employee-Plaintiff enters into this agreement freely, voluntarily, with full knowledge of the contents hereof. No undue

> influence, coercion, pressure or force have been used against the Employee-Plaintiff in the execution or acceptance of this agreement . . . .
>
> . . . .
>
> This instrument contains the entire agreement between the parties hereto, the terms of this Agreement are contractual and not mere recitals, and the sum of money recited in this Agreement to be paid upon order of the Industrial Commission is all that the said Employee-Plaintiff will ever receive. . . . This execution of this Agreement hereby replaces and voids the Mediated Settlement Agreement, upon approval of this Agreement by the North Carolina Industrial Commission.

In the FCSA, the parties agreed any amounts remaining in the Medicare Set-Aside following Plaintiff's death would revert back to Chartis, the parent company of defendant New Hampshire Insurance Company.

Defendants also agreed to pay for Plaintiff's medical treatment from the date of the FCSA until the Medicare Set-Aside was approved, funded, and activated. Special Deputy Commissioner Kyla K. Block entered an order approving the FCSA on 31 October 2012.

On 2 November 2012, Defendants provided Plaintiff with a Medicare Set-Aside Post-Settlement Administration Agreement ("the MSA Agreement"), which Plaintiff refused to sign. Defendants could not fund a Medicare Set-Aside Account unless and until Plaintiff signed the MSA Agreement. Defendants filed a Form 33 "Request for Hearing" to enforce the terms of the FCSA.

This matter was heard on 7 May 2013. Deputy Commissioner Kim Ledford ("Deputy Commissioner Ledford") issued an opinion and award on 29 October 2013. Deputy Commissioner Ledford made findings of fact, including:

> 18. Defendants have shown good grounds for their request to move forward with the professional administration of the MSA in accordance with the Final Compromise Settlement Agreement. Plaintiff is bound by the terms of the Final Compromise Settlement Agreement, including provisions regarding the establishment and professional management of the Medicare Set Aside [sic]. Plaintiff has unjustifiably refused to sign the Agreement for professional management of the Medicare Set Aside [sic], even after Defendants have made the modifications he requested.
>
> . . . .
>
> 23. Defendants have acted reasonably in attempting to address Plaintiff's concerns with the Agreement for Professional Administration of the MSA. Defendants have in good faith amended the terms of the Professional Administration Agreement pursuant to Plaintiff's requests. Despite Defendants' efforts to compromise and resolve this dispute, Plaintiff continues to refuse to sign the Professional Administration Agreement to allow the professionally administered MSA account to be funded.

Based on these findings of fact, Deputy Commissioner Ledford concluded the FCSA was "fair and just to all parties," and its terms, including the professional administration of the MSA Agreement, were binding on all parties.

Deputy Commissioner Ledford also concluded "[t]here is insufficient evidence in the record to indicate that the [FCSA] was entered due to fraud, misrepresentation,

undue influence, or mutual mistake" and ordered Plaintiff to immediately sign the MSA Agreement.

Plaintiff appealed Deputy Commissioner Ledford's opinion and award. The Full Commission reviewed the matter on 17 April 2014. The Commission issued an Opinion and Award on 17 June 2014.

The Commission's Opinion and Award stated "[t]he appealing party has not shown good grounds to reconsider the evidence, receive further evidence, or rehear the parties or their representatives." The Commission affirmed Deputy Commissioner Ledford's opinion and award, approved the MSA Agreement, and ordered Plaintiff to "immediately and properly execute the MSA Post-Settlement Administration Agreement."

Plaintiff timely filed a written notice of appeal on 23 June 2014.

II. Issues

Although Plaintiff attempts to raise several issues on appeal, we decline to reach the merits of this case. Plaintiff has wholly failed to present coherent arguments or to comply with the North Carolina Rules of Appellate Procedure.

III. Analysis

Defendants filed a brief addressing what they asserted were Plaintiff's substantive arguments on appeal. Nevertheless, we decline to address the merits and dismiss Plaintiff's appeal due to our inability to discern Plaintiff's arguments,

and due to his egregious violations of the North Carolina Rules of Appellate Procedure.

Here, we are unable to conduct a meaningful review of Plaintiff's appeal due to his noncompliance with the Rules of Appellate Procedure, including: (1) failure to clearly define the issues presented and to present the arguments and authorities upon which Plaintiff relies in support of his position, in violation of Rule 28(a); (2) failure to provide a statement of the grounds for appellate review or citation of the statute permitting appellate review, in violation of Rule 28(b)(4); (3) failure to include a concise statement of the applicable standards of review for each issue, in violation of Rule 28(b)(6); and (4) failure to include citations to the authorities upon which Plaintiff relies in his arguments, in violation of Rule 28(b)(6). N.C.R. App. P. Rule 28.

Compliance with the appellate rules is mandatory. *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 194, 657 S.E.2d 361, 362 (2008). Failure to comply with our appellate rules may subject an appeal to dismissal. *Steingress v. Steingress*, 350 N.C. 64, 65, 511 S.E.2d 298, 299 (1999). "Whether and how a court may excuse noncompliance with the rules depends on the nature of the default." *Dogwood*, 362 N.C. at 194, 657 S.E.2d at 363.

In *Dogwood*, our Supreme Court noted a party's default under the appellate rules "arises primarily from the existence of one or more of the following circumstances: (1) waiver occurring in the trial court [due to a party's failure to

properly preserve an issue for appellate review]; (2) defects in appellate jurisdiction; and (3) violation of nonjurisdictional requirements of the appellate rules." *Id.*

Plaintiff's violations are nonjurisdictional in nature. In considering Plaintiff's violations, we must

> first determine whether the noncompliance is substantial or gross under Rules 25 and 34. If [we] so conclude[], [we] should then determine which, if any, sanction under Rule 34(b) should be imposed. Finally, if [we] conclude[] that dismissal is the appropriate sanction, [we] may then consider whether the circumstances of the case justify invoking Rule 2 to reach the merits of the appeal.

Id. at 201, 657 S.E.2d at 367.

> In determining whether a party's noncompliance with the appellate rules rises to the level of a substantial failure or gross violation, the court may consider, among other factors, whether and to what extent the noncompliance impairs the court's task of review and whether and to what extent review on the merits would frustrate the adversarial process.

Id. at 200, 657 S.E.2d at 366-67 (citations omitted).

Despite our appellate courts' preference for reaching appeals on the merits, Plaintiff's substantial rules violations wholly frustrate this Court's review. We are unable to decipher Plaintiff's arguments, given the lack of clarity in his brief and in the assertions themselves. *Dogwood*, 362 N.C. at 200, 657 S.E.2d at 367 ("[I]n certain instances noncompliance with a discrete requirement of the rules may constitute a default precluding substantive review."). As a result, we also decline to

invoke Rule 2 of the Rules of Appellate Procedure to attempt to reach the merits of Plaintiff's appeal. N.C.R. App. P. 2 (allowing our appellate courts to "suspend or vary the requirements" of the appellate rules in order to "prevent manifest injustice to a party, or to expedite decision in the public interest").

IV. Conclusion

"It is not the duty of this Court to supplement an appellant's brief with legal authority or arguments not contained therein." *Eaton v. Campbell*, 220 N.C. App. 521, 522, 725 S.E.2d 893, 894 (2012) (citation and quotation marks omitted); *see also Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 402, 610 S.E.2d 360, 361 (2005); *Goodson v. P.H. Glatfelter Co.*, 171 N.C. App. 596, 606, 615 S.E.2d 350, 358, *disc. review denied*, 360 N.C. 63, 623 S.E.2d 582 (2005).

Plaintiff's substantial violations of the North Carolina Rules of Appellate Procedure impair and preclude our ability to review, and frustrate the adversarial and appellate process. Plaintiff's appellate rules violations are sufficiently egregious to warrant dismissal. In our discretion, we decline to invoke Rule 2. Plaintiff's appeal is dismissed.

DISMISSED.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).